

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5573 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAIJADA VIKRAMSINH ALIAS GHUGHUBHA BHAGUBHA

Versus

DISTRICT MAGISTRTE

Appearance:

MS DR KACHHAVAH for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/12/1999

ORAL JUDGEMENT

1. The petitioner - detenue came to be detained under the provisions of the PASA by virtue of an order passed by the District Magistrate, Bhavnagar on March 15, 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. In the grounds of detention,

District Magistrate [detaining authority herein] took into consideration the nine offences registered against the petitioner with Palitana Rural police station under Bombay Prohibition Act. The authority took into consideration statements of three anonymous witnesses and came to a conclusion that the petitioner is a bootlegger as defined under the PASA Act and he requires to be detained for immediately preventing the petitioner from pursuing his illegal and anti social activities.

2. The petitioner - detenue has approached this Court with this petition under Article 226 of the Constitution of India assailing the order of detention on various grounds. The main ground being that the exercise of powers u/s 9[2] of the PASA Act is improper, without application of mind and therefore, legally not genuine. This has resulted into infringement of right under Article 22[5] of the Constitution of India, which would vitiate the detention.

3. Ms.Kachhava, learned advocate appearing for the petitioner submitted that the statements of three anonymous witnesses were recorded by sponsoring authority on 4th and 11th March 1999. The statements of two were verified on 6th and 11th March 1999 by the Dy.S.P. and the statement of third witness is not verified by the Dy.S.P. All the three statements are verified by the detaining authority on 15/3/1999 and the order came to be passed on the same day i.e. on 15th March 1999 itself. Ms. Kachhavah submitted that there was no time with the detaining authority to seriously and genuinely consider the need for exercise of powers u/s 9[2] of the PASA Act. The powers are exercised in a mechanical manner which has resulted into denial of right of making an effective representation as the details of the anonymous witnesses have not been given to the detenue. She submitted that, in view of the decision of the Division Bench of this Court in the case of Kalidas Chandubhai Kahar v/s State of Gujarat as reported in 1993[2] GLR 1659, the petition may be allowed.

4. Mr. D.P.Joshi, learned AGP for the respondents has opposed this petition.

5. Adverting to the contentions raised by the parties, the Court is required to address the question whether in the instant case, the authority concerned has rightly exercised powers u/s 9[2] of the PASA Act and has claimed privilege.

6. There is no dispute about the fact that the

statements were recorded on 4th and 11th March 1999. Two of them were verified by the Dy.S.P., Palitana on 6th and 11th March 1999. The statement of third witness is not verified by the Dy.S.P. and the order came to be passed on 15th March, 1999.

7. The detaining authority has exercised powers u/s 9[2] of the PASA Act and has claimed privilege of not disclosing the identity of the witnesses whose statements are relied upon by the detaining authority. These powers are to be exercised in public interest. While exercising these powers, it is expected of the detaining authority to strike a balance between the requirement of public interest on one hand and protection of the right of the detainee on the other hand and therefore, it is expected of the detaining authority to apply its mind to all these relevant aspects always while exercising the powers u/s 9[2] of the PASA Act. The exercise of verification is not to be taken as an empty formality. The authority must have some contemporaneous material to come to a conclusion that the fear expressed by the witnesses qua the detainee is genuine and that there is danger to the person and property of the witness as apprehended by him from the detainee, then only the powers can be exercised. No affidavit is filed by the detaining authority. [Bai Amina v/s State of Gujarat, 22 GLR 1186 and Chandrakant N. Patel v/s State of Gujarat (1994 [1] GLR 761)]. In the instant case, the statements were verified on 15th March 1999 and the order was passed on the same day. The detaining authority has not filed any affidavit in reply to show as to what material it had before it while the proposal was considered and while the question of exercising the powers u/s 9[2] of the PASA Act. It is also not placed on record as to when the proposal was received by the detaining authority. It is not also pleaded before this Court as to what were the considerations that weighed with the detaining authority for exercise of its powers. Under the circumstances, in view of the decision in the case of Kalidas Kahar [supra] and Chandrakant N. Patel [supra], the petition deserves to be allowed.

8. The petition is allowed. The impugned order of detention passed by the District Magistrate, Bhavnagar on 15th of March 1999 in respect of the detainee Rajada Vikramsinh alias Ghughubha Bhagubha, is hereby quashed and set aside. The detainee be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

parmar*